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Total Number of Pages in This Submission

5

Application Number

10/601,602

Filing Date

June 23, 2003

First Named Inventor

JACKSON, J. R.

Art Unit

1742

Examiner Name

WILKINS, III, R. B.

Attorney Docket Number

FC-10

ENCLOSURES

(Check all that apply)

- ☐ Fee Transmittal Form
- ☐ Fee Attached
- ☐ Amendment/Reply
 - ☐ After Final
 - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/Incomplete Application
 - ☐ Reply to Missing Parts under 37 CFR 1.52 or 1.53

- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☒ Petition
 - ☐ Petition to Convert to a Provisional Application
 - ☐ Power of Attorney, Revocation
 - ☐ Change of Correspondence Address
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- ☐ After Allowance Communication to TC
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
- ☐ Proprietary Information
- ☐ Status Letter
- ☐ Other Enclosure(s) (please identify below):

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	ANDREW E. PIERCE, PATENT ATTORNEY		
Signature	<i>Andrew Pierce</i>		
Printed name	Andrew E. Pierce		
Date	December 12, 2006	Reg. No.	26,017

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FC-10 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Applicant: Jackson et al.

Examiner: WILKINS III., H.D.

Serial No.: 10/601,602

Group Art Unit: 1742

Filing Date: June 23, 2003

For: Low Energy Chlorate Electrolytic Cell and Process

PETITION TO DIRECTOR UNDER 37 CFR 1.181 (a) (3)

Assistant Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This application is on appeal with a response to the Examiner's Answer due within the period ending January 2, 2007.

The Appellants hereby petition the Director to invoke his supervisory authority and (1) instruct the above Examiner of Group 1742 to submit a corrected Examiner's

Answer designating the rejection of claims 8 - 17 under 35 USC 112, 2nd paragraph as a new ground of rejection in view of the fact that the Examiner, as set forth on page 8 of the Examiner's Answer, mailed November 2, 2006, has interpreted the terms in claim 8 "low alkali metal ion transport efficiency...membrane" for purposes of patentability as reading "less than 60 %...efficiency" and/or (2) instruct the Examiner to reopen prosecution in order to respond to the arguments of the Appellants with respect to the law as to the effect of the preamble in claim 34 in limiting the scope of the prior art, as set forth on pages 13 (2nd paragraph) - 19 in the Appeal Brief filed on September 5, 2006.

No petition fee is due with this petition which is timely, as filed within the two month period for response to said Examiner's Answer. A Reply Brief is being filed concurrently with this petition.

REMARKS

1. In said Examiner's Answer there is set forth a New Ground of Rejection (not identified as such) in which the rejection of claims 8 - 17 are newly based upon the Examiner reading into independent claim 8 a limitation of dependent claim 9. Thus, the Examiner has interpreted the claim 8 terms "low alkali metal ion transport efficiency...membrane" as a membrane having the "less than about 60 % efficiency", as recited in dependent claim 8.

2. The Appellants have argued in said Appeal Brief that the exceptions (as stated in MPEP 2111.02) to the general rule (as stated in MPEP 2114 and 2115) apply as to the determination of the scope of the prior art to be used to defeat the patentability of claims 34 - 35, as set out in pages 13 (2nd paragraph) - page 19 of said Appeal Brief.

The Examiner's Answer on page 5 merely indicates that MPEP 2114 and 2115 are controlling. The Examiner in one sentence dismisses six pages of the Appellants' argument, including the citation of case references, stating vaguely that:

"There is restriction as to whether or not the preamble is given weight."

Accordingly, it is considered that the Examiner has failed to address the argument of the Appellants on pages 13 - 19 of the Appeal Brief that the exceptions to the general rule of MPEP 2114 are pertinent to the patentability of the Appellants' claim 34. In such circumstances, under the provisions of MPEP 1207.03 II, the Examiner would be permitted to reopen prosecution in order to respond to the Appellants' arguments.

3. Instructions to the Examiner to submit a corrected examiner's answer designating the rejection discussed in item 1 above as a New Ground of Rejection and/or requiring the examiner to reopen prosecution to respond to the Appellants' argument as to the scope of the prior art used to reject claims 34 - 35, as discussed in item 2 above, are respectfully requested.

Respectfully submitted,

December *12*, 2006
161 McCracken Drive
Seneca, SC 29678

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A handwritten signature in black ink, reading "Andrew E. Pierce". The signature is fluid and cursive, with a long horizontal stroke at the end.

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